

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

APR 24 2000

FILED

IN THE MATTER OF THE DENIAL OF
APPLICATION FOR LICENSE BY
TOBY ROGERS

) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) RECOMMENDED ORDER,
) AND ORDER
)

) CAUSE NO. A-1401
)

This matter came on for hearing on the 14th day of April, 2000, before Linda R. Sanchez-Masi, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The matter arises out of a denial of an application for a resident insurance agent license. The Nebraska Department of Insurance ("Department") was represented by its attorney, Manuel Montelongo. Toby Rogers ("Applicant") was present via telephone and was not represented by an attorney. The proceedings were tape recorded by Stacey Bellefeuille, a licensed Notary Public. The Rules of Evidence were not requested and the hearing was governed accordingly. Evidence was presented by Applicant and the Department, and the matter was taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. The Department is the agency of the State of Nebraska charged with licensing insurance agents and brokers.
2. On or about March 3, 2000, as evidenced by Exhibit #2, Applicant applied for a resident insurance agent's license.
3. Applicant's address of residence, as listed on the application, is P.O. Box 722, Scottsbluff, Nebraska 69363-0722.

4. On or about March 21, 2000, Beverly Creager, Licensing Administrator for the Nebraska Department of Insurance, as evidenced by Exhibit #2, notified Applicant that his application for an insurance agent's license was denied based upon Neb.Rev.Stat. §44-4026(4). Neb.Rev.Stat. §44-4026 provides that the Director may deny an application for an agent's, broker's, or agency license if, the Applicant has been convicted of any felony or Class I, II or III Misdemeanor, evidencing that such Applicant is not worthy of the public trust.

5. On or about March 23, 2000, Applicant requested a hearing, pursuant to Neb.Rev.Stat. §44-1234, to appeal the decision denying him an insurance agent's license by the Department, as evidenced by Exhibit #3.

6. The Notice of Hearing was served upon the Applicant by facsimile to his address of record on or about April 5, 2000, as evidenced by Exhibit #1.

7. As evidenced by Exhibit #2, Applicant disclosed on his license application a 1991 conviction for one count of Immoral Acts with a Minor, a felony. Applicant was sentenced to not less than thirty (30) months and not more than forty-two (42) months in the Wyoming State Penitentiary, and he was ordered to pay \$50.00 to the Victim's Compensation Fund.

8. Applicant was incarcerated until September 1993, and was successfully released from his parole in December 1993. Applicant submitted the certified statement of Bernice E. Mason which attested to Applicant's conduct during the period he resided at a half-way house, as evidenced by Exhibit #4.

9. Applicant was employed with Connecting Point Computer Store in Scottsbluff, Nebraska, for a period of January 1995 until April 1997, as evidenced by Exhibit #4. During such time, Applicant was responsible for handling sales and money for the business, and displayed good selling and employment skills, as attested by Tim Curtis, sales manager for Connecting Point, in a

written statement, as evidenced by Exhibit #4.

10. Applicant is currently self-employed as an Internet web marketer. This business, which he developed and maintains, holds a venture partnership with Cyber Services USA and Total Merchant Marketing, as evidenced by Exhibit #4.

11. David Menard, National Marketing Director for Management and Marketing Corporation of America, testified via telephone that Applicant would be a home-based captive agent for the company. Applicant is in the process of receiving sales training and will continue to receive weekly training. Applicant will have daily contact with Mr. Menard and will report all sales directly to Mr. Menard.

CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control, and discretion over the licensing of insurance agents and brokers to sell insurance in the State of Nebraska pursuant to Neb.Rev.Stat. §44-101.01 and §44-4001 et seq.

2. The Department has personal jurisdiction over Applicant.

3. Although the past conviction for Immoral Acts with a Minor does constitute a sufficient basis for denying Applicant a license, consideration must be given to the fact that no legal action has been taken against Applicant prior to or since 1991, and that the Applicant has demonstrated that he has been successfully rehabilitated.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended to the Director of Insurance that the Director grant Applicant's request for an insurance agent's license.

Dated this 24th day of April, 2000.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

Lynda R. Sanchez-Mari
HEARING OFFICER

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order, and hereby certify that the Recommended Order is adopted as the official and final Order of this Department In The Matter Of The Denial Of Application For License By Toby Rogers, Cause No. A-1401.

Dated this 24th day of April, 2000.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

L. Tim Wagner
L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Applicant by mailing a copy to Applicant at P.O. Box 722, Scottsbluff, Nebraska 69363-0722 by certified mail, return receipt requested on this 24th day of April, 2000.

Stacy M. Bullock